

1 Robert Elias Ventura CDC # V-80485

2 CSP-CORCORAN 4A-3R-44

3 P.O. Box 3476

4 CORCORAN, CA. 93212-3476

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FILED
08 MAR 28 PM 3:04
RICHARD W. WERNING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5
6 UNITED STATES DISTRICT COURT FOR THE NORTHERN
7 DISTRICT OF CALIFORNIA

8 ROBERT ELIAS Ventura

9 PLAINTIFF

No.

SBA

10
11 V.

12 ADAMS (WARDEN)

13 DEFENDANT

REQUEST FOR APPOINTMENT OF
COUNSEL AND DECLARATION OF
INDIGENCY IN SUPPORT

(PR)

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15
16 I, Robert Elias Ventura, DECLARE THAT I AM A PETITIONER
17 TO THE ABOVE-REFERENCED MATTER, THAT I AM INCARCERATED AT CSP-
18 CORCORAN, AND THAT I AM INDIGENT AND ILLITERATE AND UNABLE TO
19 AFFORD COUNSEL. MY TOTAL ASSETS ARE \$ 00.00 AND MY INCOME IS
20 \$ 00.00 PER MONTH.

21 I HEREBY REQUEST THAT COUNSEL BE APPOINTED IN THIS MATTER SO
22 THAT MY INTERESTS MAY BE PROTECTED BY THE PROFESSIONAL ASSISTANCE
23 REQUIRED. IN ADDITION, WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE,
24 COUNSEL MUST BE APPOINTED FOR AN INDIGENT PETITIONER WHO REQUEST
25 COUNSEL. (18 U.S.C. § 3006 A. (9).) IF AN EVIDENTIARY HEARING IS ORDERED,
26 THIS DISCRETIONARY POWER BECOMES A MANDATORY RULE FOR APPOINTMENT.
27 (FEDERAL HABEAS RULE 8 (c).) GENERAL COUNSEL SHOULD BE APPOINTED
28 WHERE "FUNDAMENTAL FAIRNESS" REQUIRES IT. (see SCHULTZ V. WAINWIR

1 IGHT (11th Cir. 1983) 701 F.2d 900, 901; KUAUBERT V. GOLDSMITH (9th Cir.
 2 1986) 791 F.2d 722, 728-730; WILLIAMS V. MISSOURI (8th Cir. 1981) 640 F.2d
 3 140, 144, cert. den. 451 U.S. 990; see WIKES, § 8-41.)

4 FEDERAL JUDGES ALSO HAVE THE DISCRETION TO APPOINT COUNSEL IN OTHER
 5 CIRCUMSTANCES IF IT IS IN THE INTERESTS OF JUSTICE; COURTS MAKING SUCH
 6 A DETERMINATION WILL CONSIDER THE STRENGTH OF THE ISSUES, THE PETITION
 7 ER'S ABILITY TO ARTICULATE THE CLAIMS AND THE COMPLEXITY OF THE CASE.
 8 (18 U.S.C. § 3006 A, 28 U.S.C. §§ 1915 (d), 2254 (h); Federal Rules of Habeas
 9 Corpus, rule 8 (c); BASHOR V. RISLEY (9th Cir. 1984) 730 F.2d 1228.)

10 IN CERTAIN EXCEPTIONAL CIRCUMSTANCES, THE COURT MAY REQUEST THE
 11 VOLUNTARY ASSISTANCE OF COUNSEL PURSUANT TO 28 U.S.C. § 1915 (e)(1).
 12 TERREL V. BREWER, 935 F.2d 1015, 1017 (9th Cir. 1991). [A FINDING OF EXCEPTI
 13 ONAL CIRCUMSTANCE REQUIRES AN EVALUATION OF BOTH THE LIKELIHOOD OF THE
 14 PETITIONER TO ARTICULATE HIS CLAIMS PRO SE IN LIGHT OF THE COMPLEXITY
 15 OF THE LEGAL ISSUES INVOLVED; NEITHER OF THESE FACTORS IS DISPOSITIVE
 16 AND BOTH MUST BE VIEWED TOGETHER BEFORE REACHING A DECISION. WILBO
 17 RN V. ESCALDERON, 789 F.2d 1328 AT 1331 (9th Cir. 1986) TERREL DEMONSTR
 18 ATED SUFFICIENT WRITING ABILITY AND LEGAL KNOWLEDGE TO ARTICULATE HIS
 19 CLAIM.]; WOOD V. HOUSEWRIGHT, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
 20 [[10] COUNSEL SHOULD ONLY BE APPOINTED IN EXCEPTIONAL CIRCUMSTANCE,
 21 BASED ON SUCH FACTORS AS THE LIKELIHOOD OF SUCCESS ON THE MERITS
 22 AND THE ABILITY OF THE PETITIONER TO ARTICULATE HIS CLAIMS IN LIGHT
 23 OF THEIR COMPLEXITY WILBORN V. ESCALDERON, 789 F.2d 1328 AT 1331 (9th
 24 Cir. 1986). THE INSTANCES THAT WOOD CLAIMS INDICATE THE PRESENCE OF
 25 THESE FACTORS ARE DIFFICULTIES WHICH ANY LITIGANT WOULD HAVE IN PROC
 26 EEDING PRO SE; THEY DO NOT INDICATE EXCEPTIONAL FACTORS. AFFIRMED.]

27 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
 28 TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED ON

1 Date: March 21, 2008

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5 RESPECTFULLY SUBMITTED

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7 PETITIONER
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AFFIDAVIT

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3 I, ROBERT ELIAS Ventura, DECLARE AND STATE AS FOLLOWS:

4 1.) I AM THE PETITIONER IN A 28 U.S.C. 2254 A PETITION FOR WRIT OF HABE
5 AS CORPUS IN THE UNITED STATES DISTRICT COURT.

6 2.) I AM AN INDIGENT INMATE AND UNABLE TO AFFORD COUNSEL.

7 3.) THE ISSUES INVOLVED IN THIS CASE ARE COMPLEX AND HARD FOR ME TO
8 COMPREHEND AND UNDERSTAND THE CASE AT ISSUE.

9 4.) THE PETITIONER IS AN ILLITERATE WITH A 3.5. READING LEVEL AND DOES
10 NOT UNDERSTAND NOR COMPREHEND THE LAW.

11
12 5.) THE PETITIONER WONT BECOME LITERATE AND LEARN ANY MINIMAL
13 LAW WITHIN THE AMOUNT OF TIME IT TAKES TO PROCESS THIS 28 U.S.C. 2254
14 PETITIONER FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT.

15 6.) THE PETITIONER IS DENIED ANY TYPE OF EDUCATIONAL MATERIAL'S AND
16 EDUCATIONAL OPPORTUNITY TO LEARN ANY TYPE OF LAW.

17
18 7.) THE PETITIONER'S FRIEND AN INMATE WHO NO LONGER RESIDES AT
19 CSP-CORCORAN ASSISTED PETITIONER TO WRITE BOTH THE 28 U.S.C. 2254
20 PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT
21 AND THIS AFFIDAVIT.

22 8.) PETITIONER HAS NO ASSISTANCE IN LAW AND WITHOUT HIS FRIEND PETI
23 TIONER HAS NO ASSISTANCE IN LAW.

24
25 I, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
26 AND CORRECT.

27 EXECUTED ON: MARCH, 21 2008

RESPECTFULLY SUBMITTED

Robert Ventura

PETITIONER

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. 1746)

I, Robert Elias Ventura V-80485, declare that I am over 18

years of age and a party to this action. I am a resident of: C.S.P. 4A-3R-44

CALIFORNIA STATE PRISON

in the County of: CORCORAN

State of California. My prison address is: P.O. BOX 3476

CORCORAN, CA 93212-3476

On MARCH 21, 2008, I served the attached: _____

Application to Proceed in Forma Pauperis
(Describe Document)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named

Correctional Institution in which I am presently confined. The envelope is addressed as follows:

United States District Court For The Northern

District - U.S. (Court House)

450 Golden Gate Avenue

SAN FRANCISCO, CA 94102-3483

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 21, 2008
(Date)

Robert Ventura
(Declarant's Signature)